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No. 09-11556

In the Supreme Court of the United States

JOSE TOLENTINO, PETITIONER

v.

STATE OF NEW YORK

ON WRIT OF CERTIORARI TO THE NEW YORK COURT OF APPEALS

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether preexisting government records are subject to the exclusionary rule when law enforcement ascertains a defendant's identity as the result of a Fourth Amendment violation and uses his identity to access those records.

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INTEREST OF THE UNITED STATES

This case presents the question whether preexisting government records are subject to the exclusionary rule when law enforcement officers ascertain a defendant's identity as the result of a Fourth Amendment violation and use his identity to access those records. Because the Court's resolution of that question could affect the admissibility of evidence in federal criminal prosecutions under similar circumstances, the United States has a substantial interest in this case.

STATEMENT

Following the state trial court's denial of petitioner's motion to suppress Department of Motor Vehicle (DMV) records, petitioner entered a guilty plea. J.A. 85a-90a. Petitioner was convicted of one count of first-degree

aggravated unlicensed operation of a motor vehicle, in violation of N.Y. Veh. & Traf. Law § 511(3)(a)(ii), and sentenced to five years of probation. J.A. 91a-94a. The intermediate state appellate court and New York Court of Appeals affirmed. J.A. 95a-97a, 98a-111a.

1. On January 1, 2005, New York City police officers stopped the car that petitioner was driving because he was playing music too loudly. J.A. 98a. The officers learned petitioner's name and ran a computer check of state DMV records. J.A. 98a-99a. When that check revealed that petitioner's license had been suspended and that he had received at least ten suspensions on different dates for failure to answer a summons or pay a fine, the officers arrested petitioner. J.A. 4a, 99a.

2. a. Petitioner was subsequently indicted on one count of aggravated unlicensed operation of a motor vehicle in the first degree, in violation of N.Y. Veh. & Traf. Law § 511(3)(a)(ii). J.A. 6a. Petitioner filed a pretrial motion to suppress the DMV records, or, in the alternative, for the trial court to hold a hearing on that motion.[1] J.A. 15a-18a. Petitioner argued that the stop of his car violated the Fourth Amendment and that the evidence revealed as a result of the stop, *i.e.*, the DMV records, should be suppressed as fruits of an unlawful seizure. J.A. 25a-35a. Petitioner acknowledged that his DMV records "were in existence in computerized form prior to [his] arrest," but contended that the records remained a suppressible fruit because the police would

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[1] Petitioner also sought to suppress, *inter alia*, his statement to the arresting officers admitting that he lacked a New York driver's license. J.A. 35a-37a; see J.A. 8a. With respect to that issue only, the trial court ordered a hearing on probable cause and voluntariness. J.A. 77a. That issue has not been litigated further. The question presented is limited to the suppressibility of the preexisting DMV records.

not have accessed those records "[b]ut for [his] unlawful seizure." J.A. 28a (emphasis omitted), 31a.

The State responded that petitioner had not been stopped in violation of the Fourth Amendment and that, even if the stop had been unlawful, the DMV records were not a suppressible fruit of that stop. J.A. 68a-74a. In support of the latter argument, the State relied on, *inter alia*, this Court's statement that "[t]he 'body' or identity of a defendant . . . is never itself suppressible as fruit of an unlawful arrest," J.A. 70a (emphasis omitted) (quoting *INS* v. *Lopez Mendoza*, 468 U.S. 1032, 1039 (1984)), and federal appellate decisions holding that "there is no sanction to be applied when an illegal arrest only leads to discovery of the man's identity and that merely leads to the official file or other independent evidence," J.A. 71a (quoting *United States* v. *Guzman-Bruno*, 27 F.3d 420, 422 (9th Cir.), cert. denied, 513 U.S. 975 (1994)). The State further contended that the DMV records should not be subject to the exclusionary rule because the records "were in the possession of a public agency before" petitioner's detention and, as such, were "not the product of the stop." *Ibid.*

b. The trial court denied petitioner's motion to suppress the DMV records. J.A. 76a-78a. The court did not decide whether the stop of petitioner's car violated the Fourth Amendment, but determined that "[a]n individual does not possess a legitimate expectation of privacy in files maintained by the Department of Motor Vehicles and such records do not constitute evidence which is subject to suppression under a *fruit of the poisonous tree* analysis." J.A. 78a. Petitioner thereafter entered a guilty plea. J.A. 85a-90a.

c. A three-judge panel of the Appellate Division affirmed. J.A. 95a-97a. The panel disagreed with the trial

court's view that petitioner must establish a privacy interest in the alleged fruit of the constitutional violation for that evidence to be suppressed. J.A. 96a. But the panel nonetheless concluded that, under this Court's decision in *Lopez-Mendoza*, *supra*, a defendant's identity is never suppressible as the fruit of an unlawful arrest and that, as a result, DMV records derived from that identity are also "not suppressible fruits." *Ibid.* It was likewise significant, the court reasoned, that "the DMV records [had been] compiled independently of [petitioner's] arrest." *Ibid.*

3. a. The New York Court of Appeals affirmed by a 5-2 vote. J.A. 98a-111a. The court observed that, in light of *Lopez-Mendoza*, petitioner "did not argue that his name or identity would be subject to suppression as a fruit of the allegedly unlawful stop." J.A. 100a-101a. Rather, the court explained, petitioner "claim[ed] that the preexisting DMV records [were] subject to suppression because," absent the allegedly unlawful stop, "the police would not have learned his name and would not have been able to access [his] records." J.A. 101a.

Without addressing the lawfulness of the traffic stop, the court rejected the suppression claim. The court first analyzed federal appellate decisions holding that, pursuant to *Lopez-Mendoza*, the exclusionary rule did not apply to government immigration records accessed using a suspect's identity obtained through an unlawful arrest. J.A. 101a (citing cases from the Third, Fifth, Ninth, and Eleventh Circuits). Under *Lopez-Mendoza* and those authorities, the court reasoned, the DMV records "were * * * not suppressible as the fruit of the purportedly illegal stop." J.A. 102a. The court found additional support in "the nature of the records at issue, which were public records already in the possession of

the authorities." *Ibid.* Although "[t]he exclusionary rule enjoins the Government from benefiting from evidence it has unlawfully obtained," the court explained, "it does not reach backward to taint information that was in official hands prior to any illegality." *Ibid.* (quoting *United States* v. *Crews*, 445 U.S. 463, 475 (1980) (opinion of Brennan, J.)).

The court also concluded that the costs of applying the exclusionary rule to preexisting government files accessed through the defendant's identity outweighed the deterrence benefits. J.A. 104a. Excluding such evidence "would undermine the administration of the criminal justice system" and could have the same effect as "allow[ing] suppression of the court's jurisdiction." *Ibid.* By contrast, the court saw "few deterrence benefits": police officers already had little incentive to conduct random vehicle stops because any other "evidence recovered in the course of an illegal stop remains subject to the exclusionary rule," *ibid.*, and, because "identity-related evidence is not unique," the prosecution could often collect such evidence by other means and reindict the defendant. *Ibid.* (quoting *United States* v. *Farias-Gonzalez*, 556 F.3d 1181, 1189 (11th Cir.), cert. denied, 130 S. Ct. 74 (2009)).

The court distinguished this Court's decisions in *Davis* v. *Mississippi*, 394 U.S. 721 (1969), and *Hayes* v. *Florida*, 470 U.S. 811 (1985), which had applied the exclusionary rule to fingerprint evidence. The court pointed out that, unlike the DMV records in this case, the fingerprints excluded in *Davis* and *Hayes* did not predate the unlawful detention and that, unlike petitioner, the defendants in those cases were detained for the specific purpose of obtaining fingerprints to connect them to a crime then under investigation. J.A. 105a.

For those reasons, the court concluded, its holding —"that a defendant may not invoke the fruit-of-the-poisonous tree doctrine when the only link between improper police activity and the disputed evidence is that the police learned the defendant's name"—"would not alter the outcome" of *Davis* or *Hayes*. *Ibid.*

b. Two judges dissented. J.A. 105a-111a. The dissenting opinion contended that the majority's ruling rested "on a misreading" of the statement in *Lopez-Mendoza*, 468 U.S. at 1039, that the body or identity of a defendant is never itself suppressible. J.A. 106a-107a. In the dissenters' view, that statement meant that a defendant's identity cannot be suppressed "to defeat a court's jurisdiction over" him, but did not address the "admissibility of identity evidence" in a criminal proceeding. J.A. 107a. The dissent asserted that this Court's decisions in *Davis* and *Hayes* had established that "identity-related evidence can and should be subject to the exclusionary rule." J.A. 108a. A contrary rule, according to the dissent, would give police officers an incentive to illegally stop individuals solely to discover their identity and use it to search government records. J.A. 109a. Finally, the dissent rejected the majority's reliance on the nature of the DMV records, reasoning that the records were not obtained "independent of any illegality" because the police had "located these specific records only by relying on identifying information" learned during the allegedly illegal stop. *Ibid.*

SUMMARY OF ARGUMENT

When police officers learn a defendant's name from an allegedly unlawful stop and use his name to access public records, suppression of those preexisting records

is unwarranted. This Court's precedents make that conclusion clear.

A. 1. As this Court has recognized, "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." *INS* v. *Lopez-Mendoza*, 468 U.S. 1032, 1039 (1984). Petitioner's claim (Br. 26-28) that this broad rule applies only when suppression would defeat a court's jurisdiction cannot be reconciled with *Lopez-Mendoza*, 468 U.S. at 1043, which clearly relies on it when discussing the admissibility of evidence as well. Because petitioner's identity itself is not suppressible (which petitioner does not dispute), it follows that the DMV records accessed by use of his identity are likewise not suppressible.

2. The argument for suppression is particularly weak in this case because the DMV records were lawfully in the State's possession before the allegedly unlawful stop. The exclusionary rule "does not reach backward to taint information that was in official hands prior to any illegality." *United States* v. *Crews*, 445 U.S. 463, 475 (1980) (opinion of Brennan, J.). Because the unlawful stop "served merely to link together" petitioner with the DMV records, *ibid.*, exclusion of those records is not appropriate. The "independent source" doctrine provides analogous support. Given that the State possessed the DMV records before the allegedly unlawful stop, the records were "acquired in a fashion untainted by" that stop, *i.e.*, independent of any illegality that may have alerted the officers to their significance. *Murray* v. *United States*, 487 U.S. 533, 537-538 (1988).

B. 1. The exclusionary rule applies only where its deterrence benefits outweigh its substantial social costs. *E.g.*, *Hudson* v. *Michigan*, 547 U.S. 586, 591 (2006).

2. Extension of the exclusionary rule to the present context would provide only marginal deterrence of unconstitutional vehicle stops. Established law already requires suppression of contraband or other evidence of more serious crimes uncovered during an unlawful stop. Limited police resources, the risk to officer safety, the availability of alternative means to run motor-vehicle checks, and the threat of internal discipline and civil liability further reduce the likelihood of suspicionless vehicle stops designed to detect traffic violations.

3. In addition to undermining the truthfinding process and allowing criminal conduct to go unpunished, adoption of the broad exclusionary rule petitioner seeks would risk—at least in other analogous contexts—perpetuating an ongoing violation of law. *Lopez-Mendoza*, 468 U.S. at 1046-1047. It would also increase the frequency and complicate the resolution of suppression hearings. Those substantial costs, taken together, outweigh any marginal deterrence that exclusion might provide in this context.

4. Contrary to petitioner's contention (Br. 41-44), the record does not suggest a flagrant constitutional violation (assuming any violation occurred). Nor do this Court's pertinent precedents suggest that flagrancy would be relevant here. In any event, the decision below does not address the possibility of suppression in a case where such conduct actually occurs. It would be premature to consider that circumstance here.

ARGUMENT

SUPPRESSION OF PREEXISTING GOVERNMENT RECORDS IS UNWARRANTED WHEN THE POLICE LEARN THE DEFENDANT'S IDENTITY AS THE RESULT OF A FOURTH AMENDMENT VIOLATION AND USE HIS IDENTITY TO ACCESS THOSE RECORDS

Petitioner seeks to suppress motor-vehicle records already in the State's possession and accessed using petitioner's name, because his name was obtained through an allegedly unlawful traffic stop. As this Court has recently observed, however, "exclusion 'has always been our last resort, not our first impulse,' and our precedents establish important principles that constrain application of the exclusionary rule." *Herring* v. *United States*, 129 S. Ct. 695, 700 (2009) (quoting *Hudson* v. *Michigan*, 547 U.S. 586, 591 (2006)). Two of those principles compel rejection of petitioner's claim: (1) a defendant's identity is not a suppressible fruit, see *INS* v. *Lopez-Mendoza*, 468 U.S. 1032, 1043 (1984), and (2) preexisting government records linked to that identity are also not a suppressible fruit, see *United States* v. *Crews*, 445 U.S. 463, 475 (1980) (opinion of Brennan, J.). Any marginal deterrence benefits do not outweigh the costs of suppression. An unprecedented extension of the exclusionary rule to this context is unjustified.

A. Preexisting Government Files Accessed Through A Defendant's Identity Are Not Subject To The Exclusionary Rule Under This Court's Precedents

1. A defendant's identity and evidence derived therefrom are not suppressible fruits of an unlawful seizure

Petitioner did not argue before the New York Court of Appeals (J.A. 101a), and does not argue before this Court, that his identity itself should be suppressed. Petitioner nevertheless contends (Br. 26-28) that "identity-related evidence" (*i.e.*, evidence of or derived from a defendant's identity) generally is subject to the exclusionary rule in criminal proceedings. This Court's precedents refute that contention: if, as those precedents hold, identity itself is not suppressible in criminal or civil proceedings, then *a fortiori* evidence accessed directly through use of that identity is not suppressible.

a. A person's identity is a basic part of any encounter he has with the criminal justice system. When police suspect someone of criminal activity, they are likely to pose "questions concerning [the] suspect's identity [as] a routine and accepted part" of any investigatory stop. *Hiibel* v *Sixth Judicial Dist. Court*, 542 U.S. 177, 186 (2004). Even absent suspicious criminal activity, law enforcement may still ask individuals about their identity or for identification without implicating the Fourth Amendment. See *INS* v. *Delgado*, 466 U.S. 210, 216 (1984). At the initial investigatory stage, the officers' knowledge of the individual's identity serves important interests. Knowing that "a suspect is wanted for another offense, or has a record of violence or mental disorder," can alert the officer to the need to call for backup or to take additional safety measures. *Hiibel*, 542

U.S. at 186. "On the other hand, knowing identity may help clear a suspect and allow the police to concentrate their efforts elsewhere." *Ibid.*

When the interaction with law enforcement results in arrest and criminal prosecution, the suspect's identity becomes a foundational element of the judicial proceedings. "In every criminal case," the Court has explained, "it is known and must be known who has been arrested and who is being tried." *Hiibel*, 542 U.S. at 191. That is true regardless of whether the initial arrest that resulted in bringing the suspect before the court conformed to the requirements of the Fourth Amendment. See *Crews*, 445 U.S. at 474. The rule, as the Court described in *Lopez-Mendoza*, therefore has long been established that "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest, even if it is conceded that an unlawful arrest, search, or interrogation occurred." 468 U.S. at 1039; see also *Crews*, 445 U.S. at 479 ("[A] majority of the Court agrees that the rationale of *Frisbie* [v. *Collins*, 342 U.S. 519 (1952)] forecloses the claim that respondent's face can be suppressible as a fruit of the unlawful arrest.") (White, J., concurring in the result).

b. Petitioner is correct (Br. 27) that this Court's statement in *Lopez-Mendoza* encompasses the established rule—which petitioner labels a jurisdictional one—that "the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction" by virtue of an unlawful arrest or detention. *Frisbie*, 342 U.S. at 522; see *Gerstein* v. *Pugh*, 420 U.S. 103, 119 (1975) (an "illegal arrest or detention does not void a subsequent conviction"). The Court applied that rule to one of the two alien respon-

dents in *Lopez-Mendoza*. That respondent (Lopez-Mendoza himself) had moved to terminate deportation proceedings based on the allegation that he had been summoned before the immigration court following an unlawful arrest. 468 U.S. at 1035, 1040. This Court summarily rejected Lopez-Mendoza's claim, agreeing with the immigration courts that his "illegal arrest ha[d] no bearing on [the] subsequent deportation proceeding." *Id.* at 1040.

The Court's treatment of the other respondent (Sandoval-Sanchez) in *Lopez-Mendoza*, however, makes clear that its broad statement about the non-suppressibility of a suspect's identity applies to more than just a tribunal's authority over an unlawfully detained suspect. Sandoval-Sanchez sought to exclude evidence from his deportation proceeding—specifically, his oral admission to an immigration officer that he had entered unlawfully as well as the written record of that admission. *Lopez-Mendoza*, 468 U.S. at 1037-1038, 1040. Although calling Sandoval-Sanchez's claim "more substantial" than that of the other respondent, *id.* at 1040, the Court rejected it on the ground that the exclusionary rule does not apply in civil deportation proceedings, *id.* at 1040-1050.

Critical to that conclusion (and to the question presented here) was the Court's reasoning in the following passage ignored by both petitioner and the dissent below:

> [S]everal other factors significantly reduce the likely deterrent value of the exclusionary rule in a civil deportation proceeding. First, regardless of how the arrest is effected, deportation will still be possible when evidence not derived directly from the arrest is sufficient to support deportation. As the BIA has

> recognized, in many deportation proceedings "the sole matters necessary for the Government to establish are the respondent's identity and alienage—at which point the burden shifts to the respondent to prove the time, place, and manner of entry." *Matter of Sandoval*, 17 I. & N. Dec., at 79. *Since the person and identity of the respondent are not themselves suppressible, see supra, at 1039-1040*, the INS must prove only alienage, and that will sometimes be possible using evidence gathered independently of, or sufficiently attenuated from, the original arrest.

Lopez-Mendoza, 468 U.S. at 1043 (emphasis added). In referring back to the portion of its opinion declaring that "[t]he 'body' or identity of a defendant or respondent in a criminal or civil proceeding is never itself suppressible as a fruit of an unlawful arrest," *id.* at 1039, the Court eliminated any doubt that the statement precluded application of the exclusionary rule, not just in the "jurisdictional" sense, but also in the ordinary evidentiary sense.

Contrary to petitioner's characterization of *Lopez-Mendoza* (Br. 26-28), and consistent with the reading of the New York Court of Appeals (J.A. 100a-101a), the Court's statement that a defendant's identity is "never" suppressible as the fruit of an unlawful arrest therefore applies in this context. To the government's knowledge, this Court has never required the suppression of evidence found solely through the otherwise lawful use of information or material that is not itself suppressible. And that fact should not be surprising: logic suggests that the lawful use of admissible evidence to procure further admissible evidence is permissible. The fruit-of-the-poisonous-tree doctrine requires in the first instance a tainted branch, and absent that tainted branch, its

fruit is not forbidden. Accordingly, because petitioner's identity is not suppressible, the state DMV records accessed with the use of his identity are likewise not suppressible.

c. Petitioner contends (Br. 24-25) that this conclusion contravenes the Court's decisions in *Davis* v. *Mississippi*, 394 U.S. 721 (1969), and *Hayes* v. *Florida*, 470 U.S. 811 (1985). As the court below explained (J.A. 105a), however, *Davis* and *Hayes* are readily distinguishable. In both cases, the police, after interrogating and fingerprinting dozens of other young males, detained the defendants without warrant or probable cause for the sole purpose of fingerprinting them and linking them to a specific crime by comparing their fingerprints to those found at the crime scene. See *Davis*, 394 U.S. at 722-723; *Hayes*, 470 U.S. at 812-813. This Court held that the detentions violated the Fourth Amendment and that the fingerprints taken during them were suppressible fruits of that violation. *Davis*, 394 U.S. at 723-728; *Hayes*, 470 U.S. at 813-818.

Neither *Davis* nor *Hayes* suggests that a defendant's identity itself is subject to suppression. Indeed, the identities of the defendants in both *Davis* and *Hayes* were already known to the authorities, who did not fingerprint the defendants to determine who they were. Nor did the Court address the exclusion of preexisting evidence, such as the fingerprints obtained from the crime scene before the unlawful detentions, much less other preexisting government records. In sum, neither *Davis* nor *Hayes* precludes application in this context of the general rule that a defendant's identity and evidence derived therefrom are not suppressible fruits of an unlawful seizure.

2. *Suppression Is Especially Inappropriate When A Defendant's Identity Is Used To Access Records Already In The Government's Possession*

As argued above (Part A.1, *supra*), because a defendant's identity is not subject to the exclusionary rule, any evidence discovered by the government's lawful use of that identity should not be suppressed. See J.A. 105a (holding no suppression "when the only link between the improper police activity and the disputed evidence is that the police learned the defendant's name"). But this Court need not pronounce such a broad (albeit sound) rule to decide this case. Rather, this case involves the far more limited circumstance of the government's use of a defendant's identity to access records *already in its possession*. See J.A. 102a (rejecting application of exclusionary rule in part because DMV records "were public records already in the possession of authorities" before the stop). Both precedent and policy dictate that preexisting government records are not to be suppressed.

a. This Court has held that the exclusionary rule (where applicable) generally bars evidence, both tangible and testimonial, derived directly or indirectly from an unlawful search or seizure (until the connection becomes too attenuated). See, *e.g.*, *Murray* v. *United States*, 487 U.S. 533, 536-537 (1988). Such fruits, however, have consisted only of information or materials that come into the government's possession for the first time as a result of the Fourth Amendment violation. See Pet. Br. 22-23 (citing cases). To the government's knowledge, this Court has never required the suppression of evidence lawfully in the government's possession before an unlawful search or seizure. Where the unlawful search or seizure simply reveals the significance of re-

cords already in the government's possession, those records are not subject to suppression.

Contrary to petitioner's contention (Br. 33-35), that principle follows from this Court's decision in *Crews*, *supra*. In *Crews*, the Court held without dissent that a victim-witness's in-court identification of the defendant was not suppressible as a fruit of the defendant's unlawful arrest. 445 U.S. at 470; *id.* at 477 (Powell, J., concurring in part); *ibid.* (White, J., concurring in the result). The Court explained that the witness had based her testimony on her memory of the defendant's appearance from the crime itself. *Id.* at 471-473. A plurality* of the Court reasoned that, before arresting the defendant, "the police had already obtained access to the 'evidence' that implicated him in the robberies, *i.e.*, the mnemonic representations of the criminal retained by the victims." *Id.* at 475. Accordingly, the "unlawful arrest served merely to link together two extant ingredients in his identification." *Ibid.* The unlawful arrest did not require suppression in that case, the plurality concluded, because "[t]he exclusionary rule enjoins the Government from benefiting from evidence it has unlawfully obtained; it does not reach backward to taint information that was in official hands prior to any illegality." *Ibid.*

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* Justice Brennan was joined by Justices Stewart and Stevens for the last portion of his opinion (the rest of which constituted a majority opinion for the Court). *Crews*, 445 U.S. at 474 n.*. As petitioner acknowledges (Br. 34 n.7), however, the other Justices did not join that portion of Justice Brennan's opinion only because they would have adopted a *broader* rule that a defendant's face can never be a suppressible fruit of an unlawful arrest—an issue they believed Justice Brennan had left open, 445 U.S. at 477—not out of any disagreement with the plurality's reasoning as far as it went. *See ibid.* (Powell, J., concurring in part); *id.* at 477-478 (White, J., concurring in the result).

In support of its conclusion, the plurality relied on the D.C. Circuit's decision in *Bynum* v. *United States*, 262 F.2d 465 (1958), a case that the Court had previously "cited with approval" in *Davis*, 394 U.S. at 724-725 & n.4. See *Crews*, 445 U.S. at 476. The court of appeals in *Bynum* had ordered the suppression of fingerprints that the police took after unlawfully arresting the defendant on robbery charges. Following that ruling, the defendant was reindicted for the same charges, on the strength of "an older set of his fingerprints, taken from an FBI file, that were in no way connected with his unlawful arrest." *Ibid.* The court of appeals upheld the conviction that followed the reindictment. *Bynum* v. *United States*, 274 F.2d 767 (D.C. Cir. 1960) (per curiam). Use of the older set of fingerprints already in the FBI's file in *Bynum* was proper, the *Crews* plurality explained, because they "antedated the unlawful arrest and were thus untainted by the constitutional violation." 445 U.S. at 477. And in *Maryland* v. *Macon*, 472 U.S. 463 (1985), the Court reiterated that a violation cannot reach back and taint records already lawfully in the government's possession. *Id.* at 471 (citing *Crews*, 445 U.S. at 475 (opinion of Brennan, J.)).

Even Justice White's dissent in *Lopez-Mendoza* supports the same conclusion. Although Justice White would have applied the exclusionary rule to an alien's statements in that case, he acknowledged that preexisting immigration files would be admissible in a criminal prosecution under 8 U.S.C. 1326 for illegal reentry or presence after deportation—even when the impetus to locate those files came from an unlawful arrest. See *Lopez-Mendoza*, 468 U.S. at 1057. Specifically, in discussing Section 1326 prosecutions, Justice White stated:

> [T]he Government will have a record of the prior deportation and will have little need for any evidence that might be suppressed through application of the exclusionary rule. See *United States* v. *Pineda-Chinchilla*, 712 F.2d 942 (CA5 1983) (illegality of arrest does not bar introduction of INS records to demonstrate prior deportation), cert. denied, 464 U.S. 964 (1983).[3]

Ibid. That passage reinforces the common-sense conclusion that preexisting government records—even those put in the hands of the relevant law-enforcement or prosecuting officials only as a result of a Fourth Amendment violation—fall outside the scope of the exclusionary rule.[4]

The identical logic applies to the DMV records in this case, which petitioner concedes existed in a state government database before the unlawful stop. J.A. 31a. That the police had not pursued a specific investigation into petitioner's driving habits before the stop does not

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[3] Although the government agrees with Justice White's conclusion and the holding in *Pineda-Chinchilla*, the government does not here rely on the Fifth Circuit's rationale in that case, *i.e.*, that the records are not suppressible because aliens have no privacy or property interest in them. 712 F.2d at 944.

[4] Notwithstanding *Lopez-Mendoza*, the courts of appeals are in conflict over whether preexisting immigration files are subject to suppression in a Section 1326 prosecution when the police stop a defendant in violation of the Fourth Amendment, learn his or her identity, and use that identity to check those immigration files. See Pet. 27 (collecting cases). Although Section 1326 prosecutions are analogous to the present case, they differ in at least one important respect: the "inevitable discovery" doctrine applies more directly in the Section 1326 context because the ensuing civil deportation proceedings would result in an untainted set of fingerprints, which would provide an independent basis for linking the alien to his immigration file.

mean, as petitioner contends, that his driving records were not in official hands "in any meaningful sense" at that point. Br. 30, 35. After all, the witness's memory in *Crews*, the FBI-file fingerprints in *Bynum*, and the immigration files in *Lopez-Mendoza* all predated the allegedly unlawful arrest. None of those items of evidence was a suppressible fruit, however, even though the relevant law-enforcement authorities became aware of their significance with respect to a particular defendant only as a result of the unlawful arrest. So too here, suppression is not warranted simply because the unlawful stop allowed law enforcement to "link together" petitioner with the preexisting DMV records. *Crews*, 445 U.S. at 475; cf. *Segura* v. *United States*, 468 U.S. 796, 815 (1984) ("This Court has never held that evidence is fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police.") (internal quotation marks omitted).

b. Anticipating an argument under the "independent source" doctrine based on the State's prior possession of the DMV records, petitioner argues (Br. 30-36) that the doctrine does not preclude suppression of those records. As an initial matter, the New York Court of Appeals did not rely *per se* on the "independent source" doctrine as a justification for holding the records admissible. See J.A. 102a. Similarly, the arguments of both respondent and the United States against suppression in this case speak primarily to the threshold inapplicability of the exclusionary rule and are therefore distinct from formal application of "independent source" doctrine. Petitioner's discussion is thus largely inapt.

To the extent the "independent source" framework is useful, it supports the admissibility of preexisting government records. The concept of "independent source"

has been invoked in two different senses: (1) where evidence is "acquired in a fashion untainted by the illegal evidence-gathering activity"; and (2) where evidence "acquired by an untainted search * * * *is identical to the evidence unlawfully acquired.*" *Murray*, 487 U.S. at 537-538. The reference to "independent source" in the court below is best understood as invoking the first, more general sense. Although the police did not obtain petitioner's identity though means independent of the unlawful stop, petitioner does not (and cannot) seek to suppress his identity. Rather, he seeks only to suppress the DMV records at issue. It is undisputed that the State lawfully possessed the DMV records *before* the unlawful stop; therefore, the records necessarily were "acquired in a fashion untainted" by that stop. (Indeed, for that reason, the second, more specific use of the doctrine—on which petitioner focuses (Br. 32-33)—is inapposite here: the DMV records were not "unlawfully acquired" in the first place.) Because the records themselves are independent of any illegality that may have alerted individual officers to their significance, they should be admissible. See, *e.g.*, *Costello* v. *United States*, 365 U.S. 265, 279-280 (1961) (information government acquired before illegal wiretap not suppressible even though wiretap "prompted the calling of [defendant] before the county grand jury").

The only way that petitioner can avoid that conclusion is by drawing a sharp distinction between *government acquisition and possession* of evidence (indisputably untainted from any unlawful stop) and *law-enforcement use* of that evidence (triggered by the unlawful stop). *E.g.*, Pet. Br. 30 ("the information was not possessed *by law enforcement* in any meaningful sense until the police unearthed it") (emphasis added); *id.* at

33 ("the *police* did not discover that petitioner's license had been suspended by means independent of the unlawful seizure") (emphasis added). Not only does such a distinction lack support in this Court's Fourth Amendment precedents (see pp. 16-19, *supra*), but it would create difficult line-drawing problems. For example, if the database at issue were a joint NYPD-DMV project, presumably then the records could have been considered in police possession before the unlawful stop. Or if the arresting officer happened to have prior knowledge of petitioner's suspended license (due to a prior encounter or a small-town setting), presumably the records could be deemed to already have been "'in official hands' in a[] meaningful sense." Pet. Br. 35. Application of the exclusionary rule should not turn on such arbitrary distinctions.

B. The Costs Of Excluding Preexisting Government Files Outweigh Any Marginal Deterrence From Suppression

In addition to holding that petitioner's DMV records were not suppressible under this Court's precedents governing identity-related evidence, the New York Court of Appeals correctly determined that suppression was unwarranted because the substantial costs of excluding the records outweighed the "few deterrence benefits" that suppression might provide. J.A. 104a.

1. The deterrence benefits of exclusion must outweigh its substantial social costs

Suppression is not "a necessary consequence of [the] Fourth Amendment violation" assumed by the state courts in this case. *Herring*, 129 S. Ct. at 700; see *Illinois* v. *Gates*, 462 U.S. 213, 223 (1983) ("The question whether the exclusionary rule's remedy is appropriate in a particular context [is] an issue separate from the

question whether the Fourth Amendment rights of the party seeking to invoke the rule were violated by police conduct."). To the contrary, "the extreme sanction of exclusion" applies "only where its remedial objectives are thought most efficaciously served—that is, where its deterrence benefits outweigh its substantial social costs." *Herring*, 129 S. Ct. at 700 (quoting *United States* v. *Leon*, 468 U.S. 897, 916 (1984)); *Hudson*, 547 U.S. at 591 (internal quotation marks and citation omitted).

Based on such a cost-benefit analysis, the Court has "significantly limited" application of the exclusionary rule, even in the context of criminal trials. *Pennsylvania Bd. of Prob. & Parole* v. *Scott*, 524 U.S. 357, 364 n.4 (1998).[5] The Court has held the rule inapplicable, for example, when a police officer reasonably relies on a search warrant that is later deemed unlawful, *Leon*, 468 U.S. at 920-922; when an officer reasonably relies on a state statute later held unconstitutional, *Illinois* v. *Krull*, 480 U.S. 340, 349-350 (1987); when an officer arrests a suspect based on a warrant that a police department or judicial branch employee mistakenly lists as outstanding in a computer database, *Herring*, 129 S. Ct. at 704; *Arizona* v. *Evans*, 514 U.S. 1, 14-16 (1995); when an officer violates the Fourth Amendment's knock-and-

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[5] The Court also has held that the exclusionary rule is categorically inapplicable in various types of proceedings other than a criminal trial —*e.g.*, in grand jury proceedings, *United States* v. *Calandra*, 414 U.S. 338, 347-352 (1974); in federal habeas corpus proceedings where the prisoner has had a full and fair opportunity to litigate his Fourth Amendment claim in the state court system, *Stone* v. *Powell*, 428 U.S. 465, 494 (1976); in federal civil tax proceedings where evidence was illegally seized by state officials, *United States* v. *Janis*, 428 U.S. 433, 459-460 (1976); and in parole revocation hearings, *Scott*, 524 U.S. at 364.

announce requirement, *Hudson*, 547 U.S. at 599; and when police have an "independent source" for the tainted evidence, *Murray*, 487 U.S. at 537-538. That analysis supports the same conclusion in this context.

2. ***The deterrence benefits of exclusion would be minimal***

Subjecting a defendant's preexisting government records to the exclusionary rule would not result in the appreciable deterrence that this Court has required. See, *e.g.*, *Herring*, 129 S. Ct. at 704. "[T]he value of deterrence depends upon the strength of the incentive to commit the forbidden act." *Hudson*, 547 U.S. at 596. Petitioner asserts that, absent an exclusionary remedy, police will have a strong incentive to conduct "arbitrar[y]," suspicionless vehicle stops to check driver's licenses and registration (Br. 39-41)—the category of stops that this Court held unconstitutional in *Delaware* v. *Prouse*, 440 U.S. 648, 658-659 (1979). But petitioner vastly overstates the incentive of law enforcement to conduct random vehicle stops designed to uncover evidence of traffic violations.

a. As an initial matter, as the New York Court of Appeals explained, officers face a powerful deterrent against contravening this Court's decision in *Prouse*—namely, that all other "evidence recovered in the course of an illegal stop remains subject to the exclusionary rule." J.A. 104a; see *People* v. *Cobb*, 703 N.Y.S.2d 341, 345 (N.Y. Crim. Ct. 1997) (listing weapons, drugs, and proof of driver's intoxication as evidence likely to be discovered during vehicle stops). In *Prouse* itself, for example, the officer who conducted the unlawful vehicle stop smelled marijuana as he approached the vehicle and eventually seized drugs that he "found in plain view

on the car floor." 440 U.S. at 650. It was the suppression of that contraband, not any evidence that the driver had violated traffic or vehicle regulations, that this Court upheld. *Id.* at 650, 663.

Petitioner presumes that police officers are more interested in running a records check that might reveal a motor-vehicle violation than they are in recovering contraband or other evidence of serious crimes, which would have to suppressed if seized during an unlawful stop. But petitioner offers no support for his speculation, which runs counter to the commonsense notion that "police [will] necessarily shape their conduct in auto stops in anticipation that other evidence derived therefrom would be subject to exclusionary rule sanctions." *Cobb*, 703 N.Y.S.2d at 345.

This Court employed similar reasoning in declining to apply the exclusionary rule in *New York* v. *Harris*, 495 U.S. 14 (1990). In *Harris*, the defendant made an inculpatory written statement at the police station after officers had arrested him in violation of *Payton* v. *New York*, 445 U.S. 573 (1980), which held that the Fourth Amendment requires a warrant (or consent) before police can enter a suspect's home to arrest him. *Harris*, 495 U.S. at 16. This Court rejected the defendant's argument that suppressing his station-house statement was necessary to deter the police from violating the rule established in *Payton*. The Court instead concluded that the police's knowledge that "any evidence found, or statements taken, inside the home" remained subject to suppression was a sufficient "incentive" to heed *Payton*'s proscription. *Id.* at 20. So too here, law enforcement's incentive to obey *Prouse* remains because police officers know that anything other than records linked to a driver's identity will be subject to suppres-

sion as the product of an unlawful stop. J.A. 104a; accord *Cobb*, 703 N.Y.S.2d at 345-346 ("The potential for suppression of this other evidence is a sufficient safeguard against unlawful and precipitous police action.").

b. Petitioner also overlooks the other existing deterrents to the vehicle stops condemned in *Prouse*. As a practical matter, random stops of the sort envisioned by petitioner are unlikely to find favor within police departments for several different reasons. Vehicle stops strain "limited police resources" by occupying officers and equipment that could be deployed to prevent and investigate crime elsewhere. See *Illinois* v. *Lidster*, 540 U.S. 419, 426 (2004). Each stop also poses significant risks to officer safety. See *Arizona* v. *Johnson*, 129 S. Ct. 781, 786 (2009) ("[T]raffic stops are 'especially fraught with danger to police officers.'") (quoting *Michigan* v. *Long*, 463 U.S. 1032, 1047 (1983)). To the extent that random stops became widespread, moreover, they might well engender "community hostility" and thus undermine law enforcement's ability to prevent and solve crimes. Cf. *Lidster*, 540 U.S. at 426.

At the same time, police officers intent on inquiring into the status of a car or its owner have at their disposal means both more efficient and less risky than suspicionless roadside stops. Unlike at the time of *Prouse*, when officers would have had to contact a dispatcher by radio, police cars equipped with mobile computers allow officers to run a database check on the vehicle's license plate. That check will often inform the officer of the identity of the vehicle's registered owner and other basic facts about the vehicle, including whether it has been reported stolen. See *State* v. *Donis*, 723 A.2d 35, 36-37 (N.J. 1998). Officers who can avail themselves of that search technique—which does not implicate the driver's

Fourth Amendment rights, see *United States* v. *Diaz-Castaneda*, 494 F.3d 1146, 1150-1152 (9th Cir.) (collecting cases holding that database check of license plate is not a search under the Fourth Amendment), cert. denied, 552 U.S. 1031 (2007)—have little incentive to spend the time and incur the risk of a vehicle stop to investigate motor-vehicle infractions that they have no reasonable basis to believe actually occurred. Cf. *Hudson*, 547 U.S. at 597 (declining to "assume that exclusion in [a specific] context is necessary deterrence simply because [the Court] found that it was necessary deterrence in different contexts and long ago").

Beyond such "[p]ractical considerations," *Lidster*, 540 U.S. at 426, the risk of departmental discipline and civil liability exerts a further deterrent effect on police officers. This Court has repeatedly recognized that the prospect of "internal discipline, which can limit successful careers," serves to deter officers from violating suspects' constitutional rights. *Hudson*, 547 U.S. at 598-599; *Scott*, 524 U.S. at 369. Similarly, the Court has found civil liability to be "an effective deterrent" even when officers may be shielded by the qualified immunity defense. *Hudson*, 547 U.S. at 598 (citing *Correctional Servs. Corp.* v. *Malesko*, 534 U.S. 61, 70 (2001)). The deterrent effect is that much stronger where, as here, qualified immunity is likely to be unavailable because, accepting petitioner's allegations, he was subject to a suspicionless stop that violated clearly established federal law under *Prouse*. See *Anderson* v. *Creighton*, 483 U.S. 635, 640 (1987). Case law confirms that the possibility of monetary recovery is far from illusory. As with the knock-and-announce suits at issue in *Hudson*, "the lower courts are allowing colorable" claims of unlawful

stops in violation of *Prouse* "to go forward, unimpeded by assertions of qualified immunity." 547 U.S. at 598.[6]

3. The costs of exclusion would be substantial

Applying the exclusionary rule "detracts from the truthfinding process and allows many who would otherwise be incarcerated to escape the consequences of their actions." *Scott*, 524 U.S. at 364; see *Hudson*, 547 U.S. at 595 (rule's "considerable" costs include "the risk of releasing dangerous criminals into society," a "grave adverse consequence that exclusion of relevant incriminating evidence always entails"); *Leon*, 468 U.S. at 907-908 (the fact that "some guilty defendants may go free or receive reduced sentences as a result of favorable plea bargains" could "generate disrespect for the law and administration of justice" (brackets and citation omitted)). Petitioner acknowledges (Br. 45) that such costs would follow from applying the exclusionary remedy to the DMV records at issue in this case. According to petitioner, however, "costs beyond those endemic to the operation of the rule itself" are what really matter. Br. 46. Petitioner then offers two principal reasons (Br. 47-51) why the latter category of costs supports application of the exclusionary rule in the present context: (a) suppressing the DMV records would not result in a continuing violation of law, and (b) applying the rule to DMV records would not generate suppression litiga-

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[6] See, *e.g.*, *Carmichael* v. *Village of Palative*, 605 F.3d 451, 456-459 (7th Cir. 2010); *Bingham* v. *City of Manhattan Beach*, 341 F.3d 939, 946-948 (9th Cir. 2003), abrogated in part on other grounds by *Virginia* v. *Moore*, 553 U.S. 164 (2008); *Johnson* v. *Anhorn*, 416 F. Supp. 2d 338, 357-358 (E.D. Pa. 2006); *Lamarche* v. *Costain*, 225 F. Supp. 2d 83, 85-86 (D. Me. 2002).

tion unfamiliar to courts or difficult for them to handle.[7] But neither of those reasons demonstrates that the costs of the exclusionary remedy here are so low that they are outweighed by the marginal deterrence that suppression might supply.

a. In refusing to apply the exclusionary rule in deportation proceedings, the Court in *Lopez-Mendoza* explained that suppressing evidence in those proceedings would necessarily result in the release of persons "whose unregistered presence in this country, without more, constitutes a crime." *Id.* at 1047. The Court noted that it had "never before accepted costs of this character," *i.e.*, allowing "ongoing violations of the law," in applying the exclusionary rule. *Id.* at 1046.

Petitioner may be correct that the "unusual and significant" costs identified in *Lopez-Mendoza*, 468 U.S. at 1046, are less salient in a case, such as this one, where suppression scuttles only the "prosecution for a single-act offense." Br. 48. The legal rule that petitioner espouses, however, is not so limited. Petitioner's rule turns on the nature of the Fourth Amendment violation, not the nature of the offense being prosecuted, and it

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[7] Petitioner also contends that the costs are low here because, unlike in *Hudson*, the threat of suppression would not produce consequences that posed risks to officer safety, and because police have "many tools at their disposal" to investigate traffic offenses. Br. 51-54. The first point may be true as far as it goes, but this Court has not treated an increased risk to officer safety as a prerequisite to deeming suppression costly. Nor has the Court suggested that the availability of other means by which police might have obtained the evidence nullifies the costs of its suppression. To the contrary, as explained above (pp. 25-26, *supra*), the existence of alternate mechanisms to achieve the same law-enforcement goal indicates that police have little incentive to commit the constitutional violation, thereby reducing the deterrence value of exclusion.

does not clearly differentiate between single-act offenses and continuing ones. *E.g.*, Pet. Br. 17 ("When the police, absent reasonable suspicion or probable cause, stop an individual and acquire identity-related evidence, the traditional remedy of exclusion applies."). Indeed, defendants prosecuted for being present in the United States illegally following removal are among those most likely to seek suppression if petitioner were to prevail. See *United States* v. *Del Toro Gudino*, 376 F.3d 997, 1001 (9th Cir. 2004) ("Although the rule that identity evidence is not suppressible is not limited to § 1326 cases, its practical force is particularly great in this context."), cert. denied, 543 U.S. 1170 (2005).

Moreover, other motor-vehicle offenses detectable through a check of DMV or other government records may constitute continuing offenses, *e.g.*, owning an unregistered vehicle. Even petitioner's offense, albeit not continuing, raises similar concerns. For example, assume that the state court had granted petitioner's suppression motion and that petitioner, in the presence of police officers, then drove himself away from the courthouse in an otherwise suspicionless manner. Petitioner's proposed rule might well render the state powerless to prosecute that separate instance of unlicensed driving, because the police would not have connected petitioner to the DMV records at issue but for the previous (allegedly unlawful) stop in this case. Cf. Pet. Br. 36; but cf. *United States* v. *Navarro-Diaz*, 420 F.3d 581, 588 (6th Cir. 2005) ("If the government were forced to drop its prosecution of [defendant], the police could simply approach him on his way out of the courtroom door and demand that he identify himself.").

b. Petitioner also downplays the additional litigation costs that excluding evidence such as that at issue here

would engender. Although petitioner asserts that courts are accustomed to applying the Fourth Amendment standards governing vehicle stops (Br. 50), petitioner overlooks that the issue is typically litigated when serious criminal charges result from the discovery of other evidence (such as contraband) during the allegedly unlawful stop. See, *e.g.*, *Whren* v. *United States*, 517 U.S. 806, 809 (1996) (crack cocaine); *Prouse*, 440 U.S. at 650-651 (marijuana). Putting preexisting government records in play would give defendants facing a wider array of charges a strong incentive to litigate the legality of the stop. See *Hudson*, 547 U.S. at 595 ("The cost of entering this lottery would be small, but the jackpot enormous: suppression."). Although the end result would not necessarily be more complicated suppression hearings, it would certainly mean more of them.

The potential exclusion of preexisting government records could also create another set of increased litigation costs in cases involving fingerprints. The few federal courts of appeals that have applied the exclusionary rule to identity-related or -derived evidence—*i.e.*, fingerprints or alien immigration files in Section 1326 prosecutions—have done so when the fingerprints are taken for the purpose (at least in part) of tying the suspect to criminal conduct, rather than as part of a routine booking procedure. See *United States* v. *Oscar-Torres*, 507 F.3d 224, 230-232 (4th Cir. 2007); *United States* v. *Olivares-Rangel*, 458 F.3d 1104, 1112-1116, 1119-1121 (10th Cir. 2006); *United States* v. *Guevara-Martinez*, 262 F.3d 751, 755-756 (8th Cir. 2001). Such focus on the purpose or motives of the investigating officers imposes additional costs by forcing parties at suppression hearings to present, and trial courts to make findings based

on, evidence related to that issue. See *Oscar-Torres*, 507 F.3d at 232 (remanding for district court to determine whether, "in obtaining the fingerprints (and attendant records), law enforcement officers were motivated by an investigative purpose"); *Olivares-Rangel*, 458 F.3d at 1116, 1121 (similar). Those added litigation burdens, along with the "substantial social costs" that the Court has long recognized, outweigh "any marginal deterrence" that excluding evidence of the type at issue would provide. *Herring*, 129 S. Ct. at 700, 704 (citation omitted).

1. This case does not present the issue of flagrant police conduct

Petitioner contends (Br. 43-44) that the New York Court of Appeals erred in adopting a rule under which the exclusionary remedy is not available even on proof that police officers deliberately violated the Fourth Amendment to obtain the disputed evidence. Petitioner suggests that such a rule is at odds with this Court's focus "on the culpability of the police actions that are potentially subject to the exclusionary rule." Br. 41 (citing *Herring*, 129 S. Ct. at 701). That objection is misplaced.

In some contexts, the culpability of the police in violating the Fourth Amendment plays a crucial role—when the absence of culpability means that the exclusionary rule's deterrent purpose would be served little if at all. Cases involving the good-faith exception to the exclusionary rule, cited by petitioner (Br. 41-43), were all decided in that context. Because the doctrinal test in that context turns on whether the officer has acted in "good faith," construed as "objectively reasonable reliance," courts necessarily evaluate the flagrancy of police

conduct on a case-by-case basis. *Herring*, 129 S. Ct. at 701 (quoting *Leon*, 468 U.S. at 922 & n.23); see also *Brown* v. *Illinois*, 422 U.S. 590, 603-604 (1975) (whether a confession following an unlawful arrest should be suppressed turns, *inter alia*, on "the purpose and flagrancy of the official misconduct").

But in other contexts in which the Court has found an insufficient link between the violation and the challenged evidence to warrant suppression—as is the case here—the Court has held the exclusionary rule inapplicable without regard to the flagrancy (or the inadvertence) of the constitutional violation. In *Crews*, for example, the fact that the unlawful arrest enabled police to "link together" the defendant's identity with the victim's memory was insufficient to warrant suppression. 445 U.S. at 475 (opinion of Brennan, J.). In *Harris*, the Court refused to suppress a station house statement after an in-home arrest in violation of *Payton*. Without addressing the flagrancy of the violation, the Court explained that "[t]he penalties visited upon the Government, and in turn upon the public, * * * must bear some relation to the purposes which the law is to serve." *Harris*, 495 U.S. at 17 (brackets in original) (citation omitted). Similarly, the exclusionary rule does not apply when evidence would have been inevitably discovered or has an independent source *irrespective* of bad faith on the part of police. *See Nix* v. *Williams*, 467 U.S. 431, 445 (1984) (rejecting requirement that prosecution prove "the absence of bad faith" in order to invoke inevitable-discovery exception). And the Court's opinion in *Hudson* does not suggest that exclusion would apply even to the most egregious violations of the Fourth Amendment's knock and-announce requirement. See 547 U.S. at 596-599; but cf. *id.* at 604 (Kennedy, J.,

concurring in part and concurring in the judgment) (noting concern if "widespread pattern of violations" emerged).

This case does not present any occasion for consideration of whether a pattern of "widespread" violations or "egregious violations," *Lopez Mendoza*, 468 U.S. at 1050-1051 (opinion of O'Connor, J.), might warrant an exception to the general principles that preclude suppression in this case. Nothing in the record suggests that Fourth Amendment violations of the type alleged here are widespread. As noted in the opinion below (J.A. 98a), the police officers stopped petitioner because he was playing music too loudly while driving. Petitioner averred in the trial court that he was driving lawfully and that he "was not playing his radio at an unlawfully high volume." J.A. 34a (emphasis omitted). But petitioner did not allege any facts that would suggest a flagrant violation of constitutional rights. To the contrary, the DMV records check run by the officers in this case is a routine procedure in traffic stops designed to promote both officer safety and roadway safety. See Resp. Br. 15. Even assuming a constitutional violation, therefore, nothing suggests that it was egregious.

CONCLUSION

The judgment of the New York Court of Appeals should be affirmed.

Respectfully submitted.

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